

THE WATCHDOG

A Periodic Newsletter from
The Office of the United States Trustee - Region 16 www.usdoj.gov/ust/r16

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This issue reports on our continuing multi-prong approach to ensuring accuracy and honesty in bankruptcy cases in this district. While the number of people making false statements or filing the wrong chapter is still surprisingly high, we are starting to see an improvement in the false social security number area. More debtors are trying to truly have a fresh start when they file and are listing past false or multiple SSNs instead of continuing their previous deception. We have increasingly uncovered those cases where debtors seek to continue to use false information in their bankruptcy case, so "coming clean" is truly our recommended approach.

I hope the actions reported in this newsletter give parties, bankruptcy petition preparers, and counsel guidance on how to approach new cases in a way that will avoid an enforcement action in the first place. The one thread that runs through all of the cases reported here is that the law was well settled in each situation -- and someone chose to ignore it.

We'd like to continue to get the word out on how to do it right. Our office's educational programs have continued this past quarter and have been well attended. If there are specific topics you'd like to see, or you have an inquiry on a specific topic, please contact us at the website address above.

Maureen A. Tighe
United States Trustee

CRIMINAL CASES

Bankruptcy Petition Preparer (BPP) Convicted for False Declarations, False Oaths

On May 28, 2003, a jury found enjoined BPP Rafael Berrios guilty of false declarations and false oaths in his bankruptcy case. Berrios filed bankruptcy in 2002 but did not disclose five prior bankruptcy cases in which he used various Social Security Numbers (SSNs). He made further false statements at his §341 meeting while being examined by the Santa Ana Assistant U.S. Trustee. The Assistant U. S. Trustee testified at Berrios' trial, where the §341 meeting tape was played for the jury. Berrios' discharge was also denied March 31 pursuant to a complaint filed by the U. S. Trustee (UST). He was also enjoined from petition preparation in a 1999 adversary proceeding filed by the UST. Berrios was a business associate of Ilda Valencia, whose denial of discharge due to a false SSN was the subject of a recent published opinion by the District Court for the Central District of California.

Attorney Sentenced for using False Social Security Number and Name in his Bankruptcy Filings

On June 20, 2003, Los Angeles bankruptcy attorney Lloyd Segal was sentenced to 18 months in prison and three years supervised release and ordered to pay \$118,825 in restitution. He previously pleaded guilty to providing false SSNs, a false name, and other false information in his own bankruptcy filings.

30-Months' Imprisonment for using False SSN

Nathaniel Spencer pled guilty to one count of 152(3) and one count of 42 U.S.C. §408 for use of a false SSN in a bankruptcy filing. He was sentenced by Judge Snyder to 30 months, \$3,000 fine, \$200 Special Assessment and \$37,000 restitution that is not dischargeable in a later bankruptcy.

Retired Surgeon Concealed Assets to Defraud IRS

Robert A. Grant pled guilty to concealing millions of dollars and valuable real estate in order to discharge his \$11 million debt to the IRS in a fraudulent bankruptcy. Sentencing is set for September 8, 2003.

CONTEMPT

District Court Orders Payment of \$85,000 Sanction

On May 29, 2003 the District Court ordered Bernard Gross to pay \$85,000 in sanctions within 30 days, or to be incarcerated for four months or until he pays, whichever is longer. The sanctions were originally obtained by the UST's Santa Ana office based on Gross's attempt to use the bankruptcy system to engage in a massive rent skimming operation to the detriment of thousands of lenders and homeowners. The UST filed a civil contempt proceeding against Gross in 1998 after he failed to pay. After a number of delays, the matter went to trial and in December 1999 the Bankruptcy Court found Gross in contempt of court. The District Court affirmed in April 2001; Gross appealed to the Ninth Circuit, lost, and was subsequently denied an en banc hearing.

CHAPTER 11

\$1.3 million barred from discharge in Chapter 11 bad faith filing

On April 23, 2003, the Court granted the UST's Woodland Hills office's motion to dismiss the Chapter 11 case of Swiss Medisystems, Inc. under 11 U.S.C. §1112(b), finding it was a bad faith filing. The debtor, which was not qualified to do business in the State of California in light of its forfeited corporate status, held only one parcel of real property located in Sherman Oaks allegedly valued at \$1.6 million. Secured creditors' liens of \$1.23 million encumbered the property and two unsecured creditors had claims totaling \$70,000. The debtor's sole officer and director resided in the property but had not paid secured creditors in two years. The Court found this case a classic case of "new debtor syndrome" in that the estate's only asset of the estate was transferred to the debtor only months before the petition was filed and the bankruptcy offered the only way to forestall foreclosure. In dismissing the case with a six-month bar to refiling in any chapter, the Court found that it was filed in bad faith and that it was in the best interest of the creditors and the estate to dismiss this case.

Excessive Insider Compensation

Prompted by a heavily litigated domestic dispute, in December 2002, the 100% shareholder of a well-known local retail business that sold "adult" entertainment toys filed a Chapter 11 case for the business. Subsequent to the filing, the owner submitted a notice of insider compensation, wherein he requested approximately \$3,500 per month, plus reasonable business expenses. In May 2003, the UST discovered that during the previous six months the owner had taken approximately \$260,000 from the debtor under the category of business expenses, i.e., \$21,000 per month for lease payments on his Malibu Beach home. The owner subsequently filed his own Chapter 11 bankruptcy case and the UST was successful in seeking the appointment of an examiner in the business case. The examiner's report is due July 22, 2003.

Chapter 11 Trustee Appointment For Absent and Inconsistent Financial Reports

On July 17, 2003, Judge Ellen Carroll ordered the appointment of a Chapter 11 trustee in Preferred Delivery Systems, Inc., a legal messenger service headquartered in La Crescenta, California. The trustee was in lieu of conversion of the case to one under Chapter 7 on the pending motion by the UST for dismissal or conversion. The basis for the appointment was the lack of diligence by the debtor to timely comply with the reporting requirements of the UST, the inconsistent historical financial reports presented in the debtor's revised disclosure statement, the inconsistent financial projections presented in the debtor's revised disclosure statement compared to that given to the Court to obtain use of cash collateral and the inconsistent financial reports for post-petition operations.

Chapter 11 Trustee Appointed for Moving Company Facing Consumer Complaints

On May 13, 2003, the Court granted the Woodland Hills office's motion for the appointment of a Chapter 11 trustee in the case of Right on Time Moving. The debtor, a moving company that does 200-300 moves per month, refused to pay on claims for damages that arose from services performed post-petition for consumers that had hired the debtor to move their possessions. The motion was joined by the Better Business Bureau, which also supplied evidence of the debtor running a credit card for services performed by the debtor through the account of an unrelated company. Representatives of the debtor also testified at the §341(a) hearing that the owners of the debtor were in the process of forming a new company that would be a direct competitor of the debtor. The Court found that the appointment of a Chapter 11 trustee was in the best interest of the creditors and the estate.

DEBTOR I.D. PROGRAM

Santa Ana Office of U.S. Trustee Assists I.D. Theft Victim

In November 2002, the Santa Ana office was contacted by 80 year old Dorothy Jones who had just received notification that her Sears credit was being cancelled due to a bankruptcy filing in her name. Although the filing listed her SSN, Jones knew nothing about it until notified by Sears. The UST investigated and determined that third parties had used Jones' name and SSN not only to file bankruptcy but also to purchase a home and lease a Mercedes. The bankruptcy filing was to stay a foreclosure proceeding on the home. On April 16, 2003, on a UST motion, the Court ordered that the case filing be expunged and that the order be served on the three major credit reporting agencies.

Discharges Denied for False Oath re SSN

On May 15, 2003, the Santa Ana Office obtained a default judgment from the Court denying discharge to debtor George Mejia pursuant to 11 U.S.C. §727(a)(4) based on a false oath in his filing. The Chapter 7 trustee had referred a potentially fraudulent filing to the UST after the debtor provided him with an apparently altered Social Security card. At his §341(a) meeting, the debtor testified that the SSN was accurate. He was asked to bring more information but failed to appear at two continuances. The UST confirmed that the SSN was not assigned to the debtor.

Los Angeles Division Updates

Since April 2003, the Los Angeles office has obtained orders denying the discharge of three debtors who placed false SSNs on their petition and who either presented fake cards to the Chapter 7 trustee or gave false testimony. Four §727 complaints under variations of these scenarios are pending. These were all cases where a real SSN belonging to someone else was listed on the petition.

From April 2003 through June 2003, there were approximately 300 potential SSN issues spotted in

the Los Angeles Division, including failure to present valid documents at the initial §341(a) meeting of creditors, typographical errors in the SSN listed on the petition, and identification of additional names used by the debtor.

Sixty-nine additional cases were identified in areas where the SSN was used in an unrelated case, where identity theft occurred, where there was failure to disclose the SSN used by debtor to obtain the debt, and other instances of potential misuse.

In the upcoming months, the Los Angeles office will also address the situation where debtors and their attorneys file petitions using an Individual Taxpayer Identification Number (ITIN) but fail to initially disclose the SSNs associated with the debt and situations where attorneys continuously fail to disclose prior related cases.

Attorney Who Previously Filed Using Different SSN Stipulates to Case Dismissal

On April 15, 2003, an attorney who filed Chapter 7 bankruptcy seeking to discharge \$152,148 in unsecured debt stipulated to dismissal of her case with prejudice, after the Santa Ana office questioned her about her failure to disclose a 1998 filing in which she used a different last name and SSN. The attorney stated she did not recall the filing until the UST refreshed her memory and she used a different SSN in error for several years. That "erroneous" SSN, however, was different from either SSN she had used in her filings.

Riverside Office of U.S. Trustee Gives Opportunity to Correct SSN

On June 17, 2003, Judge Naugle fined Debtor Jackie Parker \$200 for filing a bankruptcy case using her sister's SSN. Parker was given an opportunity to correct the SSN error by notifying the three major credit reporting agencies of the mistake within thirty days of the hearing. If Parker fails to do so, her case will be dismissed *with prejudice*. Debtor's attorneys' fees in the amount of \$600 were disallowed based upon his failure to perform and adequate investigation of the facts of the case.

BANKRUPTCY PETITION PREPARERS

BPP is Permanently Enjoined and Sanctioned \$2,000

After failing to comply with an Order entered March 17, 2003 which required Terry Standifer to disgorge the sum of \$440 to the debtor, the UST brought an Order to Show Cause why Standifer should not be held in civil contempt and sanctioned. Judge Peter Carroll heard the matter on June 30, 2003 and found that Standifer was in civil contempt of his March 17, 2003 order. He awarded monetary sanctions to the UST in the amount of \$1,000 and to the Court in the amount of \$1,000. He further permanently enjoined Standifer from acting as a petition preparer in the Central District of California.

Unauthorized Practice of Law

The Court found the following BPPs engaged in the unauthorized practice of law: John S. Milligan, Opal Williams, Daniel M. Chesnut, Ana M. Valenzuela, and Adele Jeter. As a result, the Court ordered a complete disgorgement of monies paid to these preparers. Judge Bufford found that Chesnut also intentionally concealed his identity. Sarah C. Rhee, an associate of Chesnut, was also found to have participated in a scheme to engage in the unauthorized practice of law in that matter. Judge Zurzolo enjoined Williams.

BPP Stipulated to Injunction

In response to the UST's motion for fines and disgorgement of fees, BPP Carol Gafney agreed to be permanently enjoined from the preparation of documents for compensation in the Central District of California.

SANCTIONS, FINES, DISGORGEMENTS

On May 21, 2003, Judge Jury enjoined BPP Ellie Dominguez and Professional Filing Services from preparing any sort of documents for filing with the California Central District Bankruptcy Court. When

Judge Jury noticed a very professionally prepared opposition to relief from the automatic stay, she questioned the debtor. The debtor related that he went to Professional Filing Services for assistance. During the hearing on a Motion for Order to Show Cause, the UST's staff was able to provide the name of the proprietor, the Order to Show Cause was reserved and the hearing continued to allow respondent to appear. When she failed to do so, Judge Jury issued the permanent injunction.

BPP Constance Leftridge was fined \$100 for accepting the filing fee in cash from a debtor. Judge Naugle issued the fine based upon Leftridge's violation of 11 U.S.C. §110(g).

BPP Connie M. Bailey violated §110(g) by accepting the filing fee and charging debtor \$250 for her services, which is \$50 in excess of the allowed amount. Judge Naugle ordered Bailey to disgorge the entire \$250 fee to the debtor and fined her \$200 for accepting the filing fee.

The UST brought a motion for fines and disgorgement against BPPs Jack and Joan Kessman and an application for an Order to Show Cause against the Debtor and the BPPs for filing a petition with the incorrect SSN. On June 17, 2003, the Court heard the contested matter. The Court found Joan Kessman responsible for the error and fined her \$50 after a stern lecture about assuring accuracy in papers filed with the Court.

H. Laverne Hardin charged debtor \$605 to prepare her bankruptcy documents. Judge Ellen Carroll found that the reasonable fee was \$200 and ordered \$405 to be returned to the debtor.

Debtor's sister allegedly forged debtor's signature on a bankruptcy petition. Debtor learned of the filing from his auto loan lender. Following the UST's motion under §110, the Court found that BPPs Antonieta Barnes, Alberto Ivan Rangel, and Financial Plus, Inc. assisted debtor's sister in preparing the bankruptcy documents filed in this case and that Alberto Ivan Rangel knew that the sister was signing debtor's name to the petition. The Court found that the conduct was fraudulent, unfair and deceptive and certified the facts to the District Court for an award of damages.

A debtor contacted the UST's office by email through the UST website complaining that her petition preparer failed to file her bankruptcy Schedule I which caused her case to be dismissed with a 180-day bar against refiling. Prior to the dismissal, the preparer allegedly misled debtor into believing that the Schedule I had been filed with the Court. Judge Ahart ordered that all monies be returned to debtor and fined Robert L. Juarez \$1,000 for failing to give the debtor a copy of her bankruptcy papers at the time she signed them and for collecting the filing fee.

Judge Ellen Carroll and Judge Ahart fined BPP Edgar Bonilla a total of \$2,000 for failing to give two debtors a copy of their bankruptcy papers at the time they signed them and for collecting their filing fee.

ATTORNEY ACTIONS

Court Ordered Disgorgement of All Fees Collected By Counsel and BPP

A debtor paid a \$200 fee to BPP Diane Cooper to prepare her Chapter 7 filing and an additional \$200 fee to an attorney to review her bankruptcy with her prior to filing. Schedules I, J and Statement of Financial Affairs No. 1 did not contain any information. Based on these deficiencies, the UST filed a motion under 11 U.S.C. §110 and §329 seeking disgorgement of all fees collected by the BPP and counsel. Sanctions were sought based on counsel's failure to disclose his fee in the debtor's original filing. At a hearing on the UST's motion, Judge Ryan agreed to order disgorgement of all fees received by counsel and the BPP. He also advised counsel that it did not believe that it was appropriate for attorneys to undertake representation of a debtor that was limited to review of a filing prepared by a BPP.

Chapter 7 Debtor's Counsel Ordered to Disgorge \$300 of \$800 Fee For Failure to Appear at §341(a)

In the case of Manuel and Nicole Villa, Peter Carroll ordered debtors' counsel to disgorge \$300 of his \$800 fee based on the Riverside office's

allegations that he failed to attend the §341 hearing although he clearly contracted to do so. Counsel said he was undergoing surgery and procured special appearance counsel to appear at the hearing; special appearance counsel said he mis-calendared the hearing and missed it. Judge Carroll explained to debtor's counsel that it was his responsibility to have counsel present at the §341(a), and he had failed in that responsibility.

Chapter 7 Debtor's Attorney Ordered To Disgorge \$400 For Failure To Attend §341(a)

In the case of Frederica Leah Bradford, the debtor and her counsel of record contracted for limited legal services which included preparation of appropriate documents and representation of the debtor at the First Meeting of Creditors. The debtor's counsel failed to appear at the §341(a) and the debtor chose to go forward without her attorney. The meeting was concluded. The UST brought a motion to determine whether the fees charged of \$850 were excessive given counsel's failure to perform under the contract. Judge Goldberg ordered disgorgement of \$400 to the debtor.

Inactive Attorney Ordered to Disgorge \$2,150 In Fees, Ordered to Resign From The Bar of the United States District Court, and Referred to State Bar

In the Chapter 13 case of Victor and Monica Tadros, Judge Peter Carroll set an Order To Show Cause regarding the filing of their petition by attorney Melvin Daniel Horowitz who had not been an active member of the State Bar of California since February 28, 2003 and had resigned from the Bar with charges pending on May 3, 2003. However, between those dates, Horowitz filed two bankruptcy cases in the Central District of California; namely, the subject case in Riverside and a Chapter 7 case in Los Angeles. Judge Carroll ruled that counsel had violated Business and Professions Code §6125 as made applicable by Local Bankruptcy Rule 2090-1 in that he was practicing law when he was not allowed to do so because of his inactive status. Counsel argued that his resignation was not made effective by the State Bar until May 3, 2003, pursuant to a letter to him from the State Bar dated April 16, 2003. The UST noted that counsel filed a

Chapter 13 case for the debtors and that, pursuant to LBR 3015-1(t), an attorney who files a Chapter 13 case for a debtor is responsible for appearing and representing that debtor in all aspects of that case until fired by the debtor or relieved by Order of the Bankruptcy Court or substituted out by another attorney. Further, counsel was required to be aware of this Rule pursuant to LBR 2090(a)(1). As the case was over one month old and none of these events had occurred, the UST noted that the filing of the Chapter 13 case must have been done with "reckless disregard" of the representation of the debtors. Counsel could not have appeared or filed papers for the debtors under his theory that the inactive status still allowed him to file cases for the debtors. The Judge ordered counsel to provide proof of payment of the \$1,350 allegedly paid to the counsel who substituted in on the Tadros case, to disgorge \$800 through the UST to the debtor in the Los Angeles case, and resign from the Bar of the United States District Court for the Central District of California. When these matters were accomplished, the Bankruptcy Court would refer counsel to the State Bar of California for whatever further action they deemed appropriate in these circumstances.

Counsel's Fee Reduced by 86% for Inappropriate Filing

Judge Goldberg ordered counsel for Chapter 7 debtors to return \$1,300 of the \$1,500 fee, after the Riverside office objected that counsel had filed a Chapter 7 petition for debtors who clearly had the ability to pay.

Debtor's Counsel Ordered to Disgorge all Fees for filing Inaccurate Statement of Related Cases

On May 14, 2003, following a hearing on a Motion filed by the UST, Judge Ahart ordered debtor's counsel to disgorge all fees received from the debtor for filing a Statement of Related Cases that he knew, or should have known, was inaccurate because the debtor failed to disclose a prior related case that was filed by the same attorney. The attorney also failed to file an employment application.

OTHER § 727 ACTIONS

Discharge of \$416,750 in Unsecured Debt Denied

On May 16, 2003, the Court entered a default judgment granting the UST's request to deny discharge under 11 U.S.C. § 727(a)(4) and (6) to Chapter 7 debtor Mark S. Marei, thereby preventing a discharge of \$416,750 in unsecured debt. Marei listed monthly income of zero, no earnings for the two years before filing, monthly expenses of \$150, and property valued at \$550. The Santa Ana office searched the public records and discovered that Marei failed to disclose a former business and a transfer of real property for \$400,000 made within a year pre-petition. When contacted by the UST, creditors revealed that Marei may also use the names Mamdouh Mohamed Sheibl Marey and Mohamed Shible and may own property in Egypt. The UST ultimately determined that Marei's property may include an Egyptian villa with a pool, numerous large commercial refrigerated warehouses, a potato farm, livestock, and a market complex. The UST obtained an order to examine Marei and for documents under Bankruptcy Rule 2004, but Marei failed to appear or produce the documents.

SUBSTANTIAL ABUSE

Pay Stubs Show True Income - Chapter 13 More Appropriate

On April 17, 2003, the Court granted the UST's motion to dismiss for substantial abuse the Chapter 7 case of Teri Franklin, preventing a discharge of \$100,150. Based on pay stubs requested at the §341 meeting, the Riverside office alleged Franklin significantly under-reported her income. With her true income, she could pay a 93 percent dividend in Chapter 13.

File Chapter 13 if Ability to Pay

- In Alfredo Arajan, Judge Donovan dismissed this case in which the debtor had \$1,632 in monthly excess disposable income on the face of the schedules or \$58,783 over a three year period. Accordingly, the debtor could repay 100% of the \$29,849 debt in a Chapter 13 plan with funds to spare.
- In Gloria Thomas Ricky Wilson, the UST filed a motion to dismiss pursuant to §707(b) because the debtor's schedules reflected \$1,509 in excess monthly disposable income on the face of the petition; thus, the debtors could repay 100% of the Schedule F debtor of \$40,926 in a Chapter 13 plan. Following the UST's motion, this pro se debtor hired counsel and filed a motion to convert to Chapter 13, which was granted by Judge Bufford.
- Debtors David and Sheila Shono sought to discharge \$19,409 of unsecured debt. However, with their scheduled net disposable income of \$432 and some minor adjustments to expenses, the debtors could pay 100% of their unsecured creditors. The debtors did not oppose the UST's §707(b) motion and the case was dismissed.
- Judge Zurzolo dismissed the case of Kay Russell, a nurse contributing more than \$1,000 on average to her retirement account, for substantial abuse under §707(b). With other expense reductions, she had the ability to repay more than 100% of her debt in three years or less.
- The UST filed a motion to dismiss the case of Linda Wilcox on the grounds that she could pay 100% of her unsecured debts with less than her total disposable income. She had failed to include significant tax refunds on her Schedule I. Judge Ellen Carroll disallowed a \$900 reaffirmation of credit card debts that debtor claimed were in the names of her mother and sister, stating that it was inappropriate to selectively choose to reaffirm credit cards that would only benefit the debtor's family. Upon request of the debtor, Judge Carroll ordered the case converted to Chapter 13.
- Judge Bufford dismissed the case of Prudence Dancy on the grounds that she had \$1,064 in monthly excess disposable income, including

approximately \$1,000 that the debtor was deducting from payroll for savings accounts. Accordingly, the debtor could repay 98% of the Schedule F debt in a Chapter 13 plan.

- Debtor Michael E. White, Sr. received a check from a lawsuit and cashed it a week before he filed chapter 7. His bankruptcy documents did not account for the disposition of those funds and he failed to disclose the litigation on his bankruptcy statement of financial affairs. The money could have paid 95% of his creditor claims. Other irregularities were on his petition, including the failure to describe his creditors in a manner that would give them notice of the bankruptcy. On the UST's motion, Judge Donovan dismissed the case under both §707(a) and §707(b), with prejudice - specifically setting forth that any debt that could have been discharged by the bankruptcy filing will not be discharged in any future bankruptcy case.

- Judge Zurzolo granted the UST's motion to dismiss the cases of Melsida Balayan and Santos and Esmeralda Luzod for substantial abuse under §707b. While the Luzods had over \$93,000 in unsecured debt, their combined incomes and a reduction in the amounts being deducted for 401K contributions, they were able to repay 93% of their debt in three years. Likewise, Balayan could repay 50% of her debt in 36 months when her 401K contributions were eliminated.

- At the same hearing, debtors Cesar and Rebecca Morales requested that the court convert their case to chapter 13 instead of dismissing it. The motion was brought because debtors' expenses were excessive and they could pay back 100% of their debt when reasonable reductions were made.

- Judge Donovan dismissed the case of Patricia William Bryant on the grounds that debtor had \$1,635 in monthly excess disposable income on the face of the schedules. Accordingly, the debtor could repay 77% in a Chapter 13 plan of the \$70,300 Schedule F debts after paying priority creditors of \$5,945.

- The Riverside office brought a motion to dismiss the case of Kathleen Elizabeth Bingham pursuant to 11 U.S.C. §707(b). The UST alleged that with adjustments to Home Maintenance of \$100 per

month, Clothing of \$150 per month, Recreation of \$150 per month, Federal Taxes of \$100 per month (because they had already been figured in), and Other of \$145 per month, the debtor could pay 68% of her unsecured creditors over three years. The debtor filed a motion to convert her case to Chapter 13 prior to the hearing on the UST's motion. The case was subsequently converted.

- In Stephen and Michelle Jones, the UST filed a motion to dismiss under §707(b) where the debtors' scheduled income exceeded their expenses by \$181. This surplus income was sufficient to satisfy unsecured debt totaling \$77,209 since \$67,572 of the Schedule F debt was for student loans which the debtors were repaying at a monthly rate of \$650, according to Schedule J. Therefore, the surplus of \$181 could be used to pay 67% the non-student loan Schedule F debt of \$9,637 within 36 months. In response to the motion, the debtors converted their case to one under Chapter 13.

- In Sandra Sue Pyle, a §707(b) motion was filed based on \$840 of scheduled surplus income, which was sufficient to pay 40% of Schedule F debt of \$74,900 within three years. Prior to a hearing on the motion, the debtor voluntarily converted her case to one under Chapter 13.

- The UST brought a motion to dismiss the case of Arthur John Guzman under §707(b). The UST alleged that the debtor had subtracted from his income a garnishment of \$492 and a loan repayment of \$714 which would otherwise be factored into the UST's calculation of the debtor's ability to pay. Additionally, the UST objected to expenditures for cell phone (\$52) and life insurance (\$70). With the proposed adjustments, coupled with the debtor's admitted disposable income of \$262, the debtor would be able to pay over 100% of his unsecured creditors over three years. The debtor filed a motion to convert his case to one under Chapter 13 prior to the hearing on the UST's motion. The case has been converted to one under Chapter 13.

Reckless Spending Bars Discharge of \$100,000

On June 16, 2003, Judge Barr dismissed the Chapter 7 case of Maniseng Mixab, granting the motion of the Santa Ana office. The debtor sought to discharge

more than \$100,000 in unsecured debt, including \$96,000 in credit card debt. At her §341(a) meeting, she testified that her unemployed boyfriend incurred the debt, but the UST obtained credit card invoices showing around \$20,000 was incurred within 60 days pre-petition. At a hearing, the debtor admitted her prior testimony was inaccurate. Judge Barr dismissed the case as demonstrating "reckless spending" with no reasonable expectation of repayment.

Excessive Food and Recreation Costs Warrant Dismissal

In the case of Scott & Kimberly Decaro, Judge Ryan granted the UST's §707(b) motion over the debtors' objection, agreeing that a food budget of \$1,200 was excessive for a family of five since it included \$239 for cigarettes, \$260 for school lunches and \$195 for eating lunch and dinner out. He also agreed that a \$200 "miscellaneous" expense item was excessive since it included babysitting and Mrs. D. does not work. Recreation of \$150 and \$130 for DSL/cable were also found to be excessive. The debtors had sought to discharge unsecured debt of \$18,439.

Debts Owed to Divorce Lawyers are Primarily Consumer

On June 3, 2003, Judge Naugle agreed with the Riverside office that Chapter 7 debtor Shawn Metcalf owed "primarily consumer debts" that were subject to dismissal for substantial abuse under §707(b). The debtor argued his debts were not primarily consumer debts because they consisted of \$10,472 in tax debt and \$20,248 of unsecured debt owed primarily to his and his ex-wife's divorce attorneys. The Court rejected the debtor's argument that the debts for attorneys' fees were analogous to involuntary tax debts.

Debtors with \$8,100 Mortgage Payment Convert to Chapter 13

Chapter 7 debtors Richard H. and Susan F. Robertson converted to Chapter 13 after the Santa Ana office moved to dismiss for substantial abuse. The debtors, who had monthly disposable income of \$8,502 and monthly expenses of \$10,071, sought to discharge \$188,697 in credit card debt. Of their

monthly disposable income, \$8,100 was used for mortgage payments on their residence. The UST argued this was unfair to creditors and even a 50 percent reduction in housing costs would provide for a 47 percent payout to creditors over three years.

No Chapter 7 to Support Extravagant Lifestyle

On June 17, 2003, Judge Geraldine Mund granted the Woodland Hills office's motion to dismiss for "substantial abuse" the case of Bernard and Donna Van Rijn, preventing a discharge of \$188,726 in unsecured debt, primarily credit card debt. The debtors are accountants who earn more than \$152,000 per year, live in a \$600,000 home, and devote over half their net income to home maintenance and mortgage payments. The Court found substantial abuse in their refusal to change their extravagant lifestyle, and ordered dismissal unless they convert to Chapter 13.

Third Time is Not a Charm

A debtor filed her third bankruptcy petition three days after her second bankruptcy was dismissed and in violation of the 180-day bar imposed with that dismissal. Her attorney of record in the first two cases was involved in the preparation of the documents used in the third cases. The UST successfully had the third case dismissed and the stay annulled retroactive to the date of filing since debtor was ineligible to file the case. The Court reserved jurisdiction to pursue sanctions against debtor and the attorney.

REPEAT FILERS

False Statements and Failure to Disclose Result in Case Dismissal

► On motion of the Riverside office, Judge Naugle dismissed with prejudice the case of American Healthcare Discount Program for making intentionally false statements and failing to disclose eight prior related cases. The debtor listed only three parcels of residential real property, all of which were in foreclosure, as assets. The properties were

transferred to the debtor shortly before filing and were assets in prior bankruptcy cases dismissed with 180-day bars to refiling. Moreover, the debtor's president/CEO had filed two prior bankruptcy cases that were not disclosed. The court also granted in rem relief as to the properties, permanently enjoined the president/CEO and related entities, and awarded sanctions of \$6,017 for UST fees and expenses.

More Repeat Filers Being Detected

► The Los Angeles office is continuing its enforcement of repeat filers attempting to obtain a second or third discharge within the six year period. Since February 2003, the UST has obtained default judgments or stipulated judgments denying discharges in four cases. Four additional cases have been dismissed and ten complaints under §727(a)(8) are pending.

Repeat filers receive over 4-year bar to refiling under Chapter 7

■ On April 25, 2003, Judge Mund dismissed the case of Herbert and Cora Merriweather with a prohibition against refiling another bankruptcy petition under Chapter 7 until on or after July 23, 2007 (they are also barred from refiling under any other chapter for 180 days). The debtors, who listed \$57,479 in debt, filed this case even though they received a prior discharge on November 20, 2001. The debtors failed to list any prior bankruptcy cases on their petition and failed to file a Statement of Related Cases. Additionally, prior to the 2001 bankruptcy, Merriweather was a debtor under Chapter 13 in 1997 (the 2001 bankruptcy petition failed to disclose the 1997 case). In light of debtors' false statements and the fact that the debtors are ineligible to receive a discharge until July 23, 2007, Judge Mund dismissed the case with an over 4-year bar to refiling under Chapter 7, in lieu of denying the debtors a discharge under 11 U.S.C. §727(a)(8) or §727(a)(4).

■ On June 4, 2003, Judge Mund dismissed Tanya Varner with a prohibition against refiling another petition under Chapter 7 until on or after September 27, 2007. Varner, who listed \$34,856.70 in debt, filed this case even though she received a prior discharge on January 2, 2002. She also failed to list the prior bankruptcy case on the petition and failed

to file a Statement of Related Cases. In light of Varner's false statements and the fact that she is ineligible to receive a discharge until September 27, 2007, Judge Mund dismissed the case with an over 4-year bar to refiling under Chapter 7, in lieu of denying her a discharge under 11 U.S.C. §727(a)(8) or §727(a)(4).

Debtor's Chapter 7 Case Dismissed with a Two-Year Bar to Refiling Due to Failure to List Prior Discharge within 6 Years

In the case of Lilliam Rentas, the debtor had received a discharge in 1998. At the hearing on the Court's Order To Show Cause as to why her case should not be dismissed, debtor failed to appear or respond in writing, but her counsel of record appeared and indicated that his client had lied to him about whether she had previously filed bankruptcy. Counsel stated that, in all future cases, he will not rely on his client's statements, but will check the Court's database with respect to prior filings. At the request of the UST, Judge Goldberg dismissed the debtor's case with a two-year bar to refiling.

TRUSTEE PROFILE

Profile of Jeffrey I. Golden, Chapter 7 Panel Trustee in Los Angeles Division



Mr. Golden, although born in Milwaukee, Wisconsin, grew up in San Diego where he attended college at UCSD-Revelle College. While working toward his Bachelor of Administration in Political Science-Policy Analysis, obtained in 1984, he worked as a teacher's aide in children centers.

Although he originally aspired to be a stand-up comedian, he ultimately decided to pursue a legal career, a wise choice to which his colleagues would attest.

Mr. Golden obtained a JD from the USC Law Center in 1987 where he participated in Moot Court and was

honored with the Judge Barry Russell Award for Federal Courts. After graduating law school, he completed a clerkship with United States Bankruptcy Judge, Peter M. Elliott, Central District, Santa Ana Division, Ninth Circuit Bankruptcy Appellate Panel and, after Judge Elliott passed away, Mr. Golden completed his clerkship with United States Bankruptcy Judge Calvin K. Ashland, Central District, Los Angeles Division, Ninth Circuit Bankruptcy Appellate Panel.

In 1988 he joined Buchalter, Nemer, Fields & Younger, a Professional Corporation, in Newport Beach and became a shareholder with the Buchalter firm in February, 1995. He subsequently co-founded Albert, Weiland & Golden, LLP, which is celebrating its 8th Anniversary this year and has increased its size from 6 to 13 attorneys.

During this time period, Mr. Golden was President of the Orange County Bankruptcy Forum in 1996, an editor of the California Bankruptcy Journal since 1992 and last year a co-managing editor on an edition dedicated to bankruptcy trustee issues. He has also assisted on various bar and bar related committees involving the local bankruptcy rules, the Chapter 11 general order, and various legislative issues.

Mr. Golden taught classes in Bankruptcy Litigation for several years as an Adjunct Professor at the University of California, Irvine, Legal Assistant Program and became certified as a bankruptcy mediator. He has also served as an arbitrator of bankruptcy issues.

Mr. Golden enjoys writing and speaking on various commercial law and bankruptcy issues including prospective legislation, amendments to rules, adequate protection and preferential transfers. He has spoken, among other places, at the Orange County Bankruptcy Forum, the Orange County Bar Association, Commercial Law and Bankruptcy Section, the California CPA Education Foundation, the American Business Institute and many others.

He thoroughly enjoys his insolvency practice and being a trustee, especially from the standpoint of helping people and businesses realize their full potential.

He successfully litigated the In re Barakat, 99 F.3d 1520 (9th Cir. 1996) decision in which the Ninth Circuit published the law on separate classification but did not address the *stare decisis* effect of the Bankruptcy Appellate Panel.

In one of his more interesting trustee cases, Mr. Golden is in the process of obtaining a distribution of surplus to equity after all creditors are paid in full. In the same case, there was a recent criminal conviction of the president of the Debtor through a plea bargain based upon claims under 18 U.S.C. § 371 and 18 U.S.C. §157.

He has been very active in his childrens' PTA, YMCA, and various charitable organizations, including SPIN (Serving People in Need), PS I Love You, and others. He has been married for 14 years to Mickey and has a 9 year old daughter named Becky and a 4 year old son named Brian.

CHAPTER 13 TRUSTEE DESIGNATED

Kathy A. Dockery has been designated to take over the office of former standing trustee Edwina Dowell. Ms. Dockery has an extensive accounting and management background which she brings to the position. For the last three years, she has been the Chief Financial Officer and Senior Vice President for the California Science Center Foundation of Los Angeles. Prior to that, she was a Controller in an international consumer products company. From 1989 to 1999, Kathy was a partner in Dockery and Walker, an accounting and management consulting firm in Orange County where her clients included the Federal Deposit Insurance Corporation, Resolution Trust Corporation and the Community Redevelopment Agency. Ms. Dockery holds a Master's Degree in Business Administration from Columbia University in New York, and a Bachelor of Arts in Business Administration from Ohio University. She is a certified public accountant.

CONSUMER DEBTOR EDUCATION BROWN BAG MEETINGS

The following meetings are scheduled:



September 17 - *Consumer Bankruptcy Tax Issues - What Debtor's Counsel Needs to Know*

Speakers: Wes Avery, Attorney;
John Menchaca, Chapter 7 Trustee

November 4 - *The Basics of Litigating Cases under 11 U.S.C. § 523*

Speaker: J. Scott Bovitz, Attorney

The meetings are free and take place from 12 noon to 1:00 p.m. at Ernst & Young Plaza, 725 South Figueroa Street, Los Angeles in room #101 on the ground floor. All programs qualify for one hour of MCLE credit to the participants.